BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.101, 17.56.102, 17.56.104, 17.56.105, 17.56.201 through 17.56.203, 17.56.301 through 17.56.304, 17.56.308 through 17.56.310, 17.56.403, 17.56.407, 17.56.408, 17.56.701 through 17.56.705, 17.56.801 through 17.56.803, 17.56.805 through 17.56.811, 17.56.816, 17.56.817, 17.56.820 through 17.56.825, 17.56.827, 17.56.828, 17.56.901, 17.56.1002, 17.56.1003 through 17.56.1005, and 17.56.1422; the adoption of new rule I; and the repeal of ARM 17.56.120 and 17.56.121 pertaining to the management of underground storage tanks, incorporation by reference, and assessment of administrative penalties	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On July 25, 2007, at 10:30 a.m., a public hearing will be held in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., July 16, 2007, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail rmartin@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.56.101 DEFINITIONS For the purposes of this chapter and unless otherwise provided, the following terms have the meanings given to them in this rule and shall be used in conjunction with those definitions in 75-11-203, 75-11-302, and 75-11-503, MCA.

(1) through (31) remain the same.

(32) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey

regulated substances. Installation ~~also~~ includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system. The terms "installation" and "to install" do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(33) "Installer" means an individual who ~~is engaged in the business of installation or closure of~~ installs or closes underground storage tank~~s~~ systems.

(34) through (43) remain the same.

(44) "Operator" means ~~any person in control of, or having responsibility for, the daily operation of the UST system.~~:

(a) for purposes of administration of Title 75, chapter 11, parts 2 and 5, MCA, the term as defined in 75-11-203, MCA; and

(b) for purposes of administration of Title 75, chapter 11, part 3, MCA, the term as defined in 75-11-302, MCA.

(45) through (47)(c)(ii) remain the same.

(48) "Person" means ~~an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.~~:

(a) for purposes of administration of Title 75, chapter 11, part 2, MCA, the term as defined in 75-11-203, MCA;

(b) for purposes of administration of Title 75, chapter 11, part 3, MCA, the term as defined in 75-11-302, MCA; and

(c) for purposes of administration of Title 75, chapter 11, part 5, MCA, the term as defined in 75-11-503, MCA.

(49) "Petroleum storage tank" or "PST" means a tank that contains or contained petroleum or petroleum products and that is:

(a) through (c) remain the same.

(d) aboveground pipes associated with tanks under ~~(47)~~ (49)(b) and (c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety ~~Laws~~ Act of 1968 (49 USC ~~60101~~ 1671, et seq.); ~~and~~

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC 2001, et seq.); and

~~(ii)~~ (iii) state law comparable to the provisions of law referred to in ~~(47)~~ (49)(d)(i) and (ii), if the facility is intrastate.

(50) through (52) remain the same.

(53) "Public water supply system" means a public water supply system as defined ~~by 75-6-107~~ in 75-6-102, MCA.

(54) and (55) remain the same.

(56) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a tank system into ground water, surface water, surface soils, or subsurface soils.

(57) through (61) remain the same.

(62) "Secondary containment" means:

(a) a liquid-tight (secondary) shell or jacket that extends around the inner (primary) shell of a tank or piping that is designed, constructed, and installed to contain any leak from any part of the tank or piping that routinely contains a regulated substance. Secondary containment must be designed, constructed, and installed to:

(i) prevent releases to the environment;

(ii) allow for monitoring of releases between the primary and secondary shells; and

(iii) allow for detection of any leak; and

(b) liquid-tight tank sumps, transition sumps, or under-dispenser containment sumps that will contain a leak from any part of the tank or piping that routinely contains a regulated substance until detection.

(62) through (69) remain the same, but are renumbered (63) through (70).

(71) "Under-dispenser containment" means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or ground water (see [NEW RULE I]).

(72) "Underground storage tank" or "UST" has the meaning given in 75-11-503, MCA.

(70) remains the same, but is renumbered (73).

~~(71)~~ (74) "UST system" or "tank system" means an underground storage tank or petroleum storage tank, as appropriate, ~~underground~~ ancillary equipment designed to prevent, detect, or contain a release from an UST system, the equipment necessary to connect dispensers to product piping, and containment system, if any.

(72) remains the same, but is renumbered (75).

AUTH: 75-11-204, 75-11-319, 75-11-505, MCA
IMP: 75-11-203, 75-11-302, 75-11-319, 75-11-505, MCA

REASON: The department is proposing to review the definitions of "installation," "installer," "operator," "person," and "UST system" to conform the terms to the definitions of the same terms in 75-11-203, MCA. Allowance is made for the differing definitions of "person" in 75-11-203, 75-11-302, and 75-11-503, MCA. Allowance is made for the differing definitions of "operator" in 75-11-203 and 75-11-302, MCA. The department is proposing to revise the definitions of "petroleum storage tank" and "release" to conform the terms to the definitions of the same terms in 75-11-302, MCA. These amendments are necessary to keep the rules consistent with applicable statutes.

The department is proposing to add definitions of "secondary containment" and "under-dispenser containment" because the terms are used in New Rule I. The department is proposing to add the definition of "underground storage tank" because the term is used throughout the chapter.

The department is proposing to revise the definition of "UST system" to include connecting equipment including shear valves, check valves, and flex connectors. This inclusion is necessary to implement New Rule I, which requires under-dispenser containment.

17.56.102 APPLICABILITY (1) through (2)(b) remain the same.

(3) Subchapters 2, 3, 4, 7, 8, 9, 10, 13, and 14 do not apply to any of the following types of PSTs and UST systems:

(a) through (e) remain the same.

(f) aboveground pipes associated with tanks under (3)(d) or (e)~~, except that pipelines regulated under the following laws are excluded:~~

~~(i) the Pipeline Safety Laws (49 USC 60101, et seq.); and~~

~~(ii) state law comparable to the provisions of law referred to in (3)(f)(i), if the facility is intrastate~~; or

(g) through (6)(c) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-319, 75-11-505, MCA

REASON: The department is proposing to delete outdated language in ARM 17.56.102(3)(f) that does not affect the meaning of the rule. The pipelines referenced in this subsection are excluded from regulation under the definitions in Title 75, chapter 11, MCA, and in ARM 17.56.101. The reference to those pipelines in this rule was intended to simply restate the exclusion in the definitions. However, the reference was inserted as an exception to a list of excluded systems, which has the opposite effect of what was intended. It is necessary to delete the reference because it is redundant and misleading.

17.56.104 TANK STANDARDS FOR EXEMPTED UST SYSTEMS (1) No person may install an UST system listed in ARM 17.56.102(4) or (5) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

(1) through (3) remain the same, but are renumbered (a) through (c).

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The first paragraph of this rule was inadvertently not numbered in a previous rulemaking. The department is proposing to correct the rule numbering.

The authorization and implementation statutes listed for ARM 17.56.104 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when this rule was adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

17.56.105 VARIANCES (1) through (6) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP ~~75-10-405~~ 75-11-505, MCA

REASON: The authorization and implementation statutes in ARM 17.56.105 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when this rule was adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

17.56.201 PERFORMANCE STANDARDS FOR NEW UST SYSTEMS

(1) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems ~~must~~ shall meet the following requirements:

(a) Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with any one of the codes of practice developed by a nationally recognized association or independent testing laboratory ~~adopted by reference~~ in (1)(a)(i) through (iii):

(i) the tank is constructed of fiberglass-reinforced plastic in accordance with any one of the standards ~~adopted by reference~~ in ~~(1)(f)~~ (2)(a) through (c); or

(ii) the tank is constructed of steel and cathodically protected in the following manner and in accordance with any one of the standards ~~adopted by reference~~ in ~~(1)(g)~~ (2)(d) through (j):

(A) through (D) remain the same.

(iii) the tank is constructed of a steel-fiberglass-reinforced-plastic composite in accordance with all of the standards ~~adopted by reference~~ in ~~(1)(j)(i) and (ii)~~ (2)(e) and (k).

(b) The piping that may contain regulated substances, including vent lines and fill lines, and is in contact with the ground, must be properly designed, constructed, and protected from corrosion in accordance with any one of the codes of practice developed by a nationally recognized association or independent testing laboratory ~~adopted by reference~~ in (1)(b)(i) and (ii):

(i) the piping is constructed of fiberglass-reinforced plastic in accordance with all of the standards ~~adopted by reference~~ in ~~(1)(i)~~ (2)(l) through (o); or

(ii) the piping is constructed of steel and cathodically protected in the following manner and in accordance with all of the standards ~~adopted by reference~~ in ~~(1)(j)~~ (2)(p) through (s):

(A) through (c)(ii)(B) remain the same.

(d) All tanks and piping must be properly installed in accordance with this chapter, the manufacturer's instructions or specifications, all permit conditions, and all applicable standards ~~adopted by reference~~ in ~~(1)(k)~~ (2)(q) and (t) through (v).

(e) through (e)(iv) remain the same.

~~(f)~~ (2) The department ~~hereby~~ adopts and incorporates by reference the version in effect on July 1, 2006, of the following standards, specifications, and publications:

~~(i)~~ (a) Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products" which sets

forth requirements for the manufacture and installation of glass-fiber-reinforced plastic underground storage tanks for petroleum products, ~~and~~ a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

~~(ii)~~ (b) Underwriter's Laboratories of Canada ~~CAN4-S615-M83~~ Standard ULC-S615, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products," which sets forth requirements for the manufacture and installation of horizontal reinforced plastic underground tanks for petroleum products, ~~and~~ a copy of which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9; ~~and~~

~~(iii)~~ (c) American Society of Testing and Materials Standard D4021~~-86~~, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks," which sets forth design standards for FRP UST tanks, ~~and~~ a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017~~.~~;

~~(g) The department hereby adopts and incorporates by reference:~~

~~(i)~~ (d) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks," which sets forth design and installation standards of cathodically protected steel underground storage tanks, ~~and~~ a copy of which may be obtained from Steel Tank Institute, ~~728 Anthony Trail, Northbrook, IL 60062, (312) 498-1980~~ 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265;

~~(ii)~~ (e) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," which sets forth ~~design standards for cathodically protected steel~~ requirements for corrosion protection systems for underground storage tanks, ~~and~~ a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

~~(iii)~~ (f) Underwriters Laboratories of Canada ~~CAN4-S603-M85~~ Standard ULC-S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," ~~and CAN4-5603.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems" which sets forth design standards for cathodically protected steel underground storage tanks and~~ which sets forth the requirements that cover single- and double-wall cylindrical steel tanks of the horizontal, nonpressure type that are used for the underground storage of flammable liquids and combustible liquids, a copy of which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9; ~~and~~

(g) Underwriters Laboratories of Canada Standard ULC-S603.1, "Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids," which sets forth the requirements for external corrosion protection systems on carbon steel underground storage tanks, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

(h) Underwriters Laboratories of Canada Standard ULC-S631, "Standard for Isolating Bushing for Steel Underground Tanks Protected with External Corrosion

Protection Systems," which sets forth requirements for low profile nylon isolating bushings with internal and external threads and component thread sealant which are intended for use in the external corrosion protection of underground steel tanks, a copy of which may be obtained from Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9;

~~(iv)~~ (i) National Association of Corrosion Engineers Standard RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth cathodic protection standards for buried or submerged metallic liquid storage systems, a copy of which may be obtained from NACE, International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200; ~~and~~

(j) Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," which sets forth ~~design standards for cathodically protected steel underground storage~~ requirements for horizontal atmospheric-type steel tanks intended for the underground storage of flammable and combustible liquids, and single wall tanks, secondary containment tanks, multiple compartment single wall, and multiple compartment secondary containment tanks, a copy of which may be obtained from Underwriters Laboratory, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709~~.~~;

~~(h) The department hereby adopts and incorporates by reference:~~

~~(i) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks" which sets forth requirements for corrosion protection systems for underground storage tanks and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709; and~~

~~(ii)~~ (k) The Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks," which sets forth a minimum consensus standard for the fabrication of FRP clad/composite tanks, ~~and~~ a copy of which may be obtained from The Association for Composite Tanks, 108 N. State Street, Suite 720, Chicago, IL 60602~~.~~;

~~(i) The department hereby adopts and incorporates by reference:~~

~~(i)~~ (l) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe," which sets forth design standards for fiberglass reinforced plastic pipe, ~~and~~ a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

~~(ii)~~ (m) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas," which sets forth manufacture and installation standards for pipe connectors, ~~and~~ a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

~~(iii)~~ (n) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids," which sets forth requirements of manufacture and installation of fiberglass reinforced plastic pipe and fittings, ~~and~~ a copy of which may be obtained from Underwriters~~'~~ Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9; ~~and~~

~~(iv)~~ (o) Underwriters Laboratories of Canada Standard ~~CAN-4-S633-M81~~ ULC-S633, "Flexible Underground Hose Connectors," which sets forth requirements for flexible underground hose connectors for petroleum products, ~~and~~ a copy of

which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9.;

(j) The department hereby adopts and incorporates by reference:

(i) (p) "Uniform Fire Code", article 79, "Flammable and Combustible Liquids" (1997 edition) which sets forth the fire protection requirements where flammable and combustible liquids are stored or dispensed, and a copy of which may be obtained from Uniform Fire Code Association, 1260 Lake Boulevard, Suite 250, Davis, CA 95616, (888) 785-3473 National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," which sets forth transferring and dispensing practices for flammable and combustible liquids, a copy of which may be obtained from National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555;

(ii) (q) American Petroleum Institute Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems," (5th edition, revised March 1996) which sets forth requirements for sound proper installation of procedures for UST systems, and a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956;

(iii) (r) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," which sets forth the cathodic protection standards for UST systems, and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

(iv) (s) National Association of Corrosion Engineers RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems," which sets forth practices for the control of external corrosion or buried or submerged metallic piping systems, and a copy of which may be obtained from NACE, International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200.;

(k) The department hereby adopts and incorporates by reference:

(i) American Petroleum Institute Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems" (5th edition, revised March 1996) which sets forth proper installation procedures for UST systems, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956;

(ii) (t) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems," (revised 2000) which sets forth proper installation procedures for UST systems, a copy of which may be obtained from Petroleum Equipment Institute, P.O. Box 2380, Tulsa, OK 74101, (918) 494-9696; and

(iii) (u) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," which sets forth proper installation and design standards for piping of an UST system, a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017; and

(v) American National Standards Institute Standard B31.4, "Liquid Petroleum Transportation Piping System," which sets forth proper installation and design standards for piping of an UST system, and a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York,

NY 10017.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to provide an effective date for the standards, specifications, and publications referenced in this rule. This amendment is not substantive, but would make it easier for the regulated community to identify the applicable edition of publications that are utilized. The department has attempted to compare the edition of the publications currently referenced in this rule with the 2006 edition. The department found that most of the editions that were effective in 1989 (the year most of the listed publications were initially referenced) are not readily available. In those cases where the currently incorporated edition of a publication could be compared with the edition proposed to be referenced, the department found no significant differences between the two editions. The department is also proposing to revise incorrectly cited publications.

17.56.202 UPGRADING OF EXISTING UST SYSTEMS (1) through (1)(c) remain the same.

(2) Steel tanks must be upgraded to meet any one of the following requirements in accordance with all of the standards ~~adopted by reference~~ in (5):

(a) through (c)(ii) remain the same.

(3) Metal piping that may contain regulated substances, including vent lines and fill lines, and is in contact with the ground, must be cathodically protected in accordance with all of the standards adopted by reference in ARM 17.56.201~~(1)(j)~~ (2)(p) through (s), and must meet the requirements of ARM 17.56.201(1)(b)(ii)(B), (C), and (D).

(4) remains the same.

(5) The department ~~hereby~~ adopts and incorporates by reference the version in effect on July 1, 2006, of the following publications and standards:

(a) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks," which sets forth repair and lining of standards for UST systems, ~~and~~ a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(b) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection," which sets forth repair and lining standards for UST systems, ~~and~~ a copy of which may be obtained from National Leak Prevention Association, 7685 Sields Ertel Road, Cincinnati, OH 45241, (800) 543-1838;

(c) National Association of Corrosion Engineers Standard RP0285~~-2002~~, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth cathodic protection standards for buried or submerged metallic liquid storage systems, a copy of which may be obtained from NACE, International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200; and

(d) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," which sets forth cathodic protection standards for UST systems, ~~and~~ a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to provide an effective date for the standards and publications referenced in this rule. This amendment is not substantive, but would make it easier for the regulated community to identify the applicable edition of publications that are utilized. The department has attempted to compare the edition of the publications currently referenced in this rule with the 2006 edition. The department found that most of the editions that were effective in 1989 (the year most of the listed publications were initially referenced) are not readily available. In those cases where the currently incorporated edition of a publication could be compared with the edition proposed to be referenced, the department found no significant differences between the two editions. The department is also proposing to revise incorrectly cited publications.

17.56.203 ADDITIONAL PERFORMANCE STANDARDS FOR NEW UNDERGROUND PIPING CONNECTED TO ABOVEGROUND TANKS OR TO UNDERGROUND TANKS ~~NOT LOCATED AT A FARM OR RESIDENCE~~ WITH A CAPACITY OF ~~1100~~ 660 GALLONS OR LESS USED TO STORE HEATING OIL

(1) through (3) remain the same.

AUTH: ~~75-10-405,~~ 75-11-302, 75-11-505, MCA
IMP: ~~75-10-405,~~ 75-11-302, 75-11-505, MCA

REASON: The department is proposing to revise the title of ARM 17.56.203 from 1100 to 660 gallons because the title does not match the text in ARM 17.56.203(1). Also, the phrase "not located at a farm or residence" is deleted because it misstates the content of the rule.

Some of the authorization and implementation statutes in ARM 17.56.203 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when this rule was adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

17.56.301 SPILL AND OVERFILL CONTROL (1) Owners and operators ~~must~~ shall ensure that releases due to spilling or overfilling do not occur. The owner and operator ~~must~~ shall ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. The transfer procedures described in ~~Article 79, Division XII of the Uniform Fire Code adopted by reference in (3) shall~~ National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids," must be

used to comply with this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(2) The owner and operator ~~must~~ shall report, investigate, and clean up any spills and overfills in accordance with ARM 17.56.505.

(3) The department ~~hereby~~ adopts and incorporates by reference the ~~Uniform Fire Code, Article 79, "Flammable and Combustible Liquids" (1997 edition) which sets forth the fire protection requirements where flammable and combustible materials are stored or dispensed, a copy of which may be obtained from Uniform Fire Code Association, 1260 Lake Boulevard, Suite 250, Davis, CA 95616, (888) 785-3473. Further guidance on spill and overfill prevention appears in~~ version in effect on July 1, 2006, of the following standards and publications:

(a) National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids," which applies to tank vehicles to be used for the transportation of normally stable flammable and combustible liquids with a flash point below 200ºF (93.4ºC). Standard 385 provides minimum requirements for the design and construction of cargo tanks and their appurtenances. A copy may be obtained from National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555;

(b) American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," which sets forth transferring and dispensing practices for flammable and combustible liquids, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956; and

(c) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," ~~(2000 edition)~~ which sets forth transferring and dispensing practices for flammable and combustible liquids, ~~and~~ a copy of which may be obtained from ~~Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956, or~~ National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to replace the incorporation by reference of Article 79 of the Uniform Fire Code with the National Fire Protection Association Standard 385, because the National Fire Protection Association has superseded Article 79 with Standard 385. This amendment is not substantive.

The department is proposing to provide an effective date for the standards and publications referenced in this rule. This amendment is not substantive, but would make it easier for the regulated community to identify the applicable edition of publications that are utilized. The department is also proposing to revise incorrectly cited publications.

17.56.302 OPERATION AND MAINTENANCE OF CORROSION PROTECTION (1) All owners and operators of steel UST systems with corrosion

protection ~~must~~ shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(a) remains the same.

(b) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(i) remains the same.

(ii) the criteria that are used to determine that cathodic protection is adequate as required by this rule must be in accordance with National Association of Corrosion Engineers Standard RP0285~~-2002~~, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection"~~, adopted by reference in (1)(e)~~.

(c) through (d)(ii) remain the same.

~~(e)~~ (2) The department ~~hereby~~ adopts and incorporates by reference the version in effect on July 1, 2006, of National Association of Corrosion Engineers Standard RP0285~~-2002~~, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," which sets forth cathodic protection system standards for prevention of corrosion on buried or submerged metallic UST systems, ~~and~~ a copy of which may be obtained from NACE, International, P.O. Box 201009, Houston, TX 77216-1009, (281) 228-6200.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to provide an effective date for the standard referenced in this rule. This amendment is not substantive and would make it easier for the regulated community to identify the applicable edition of the standard that is utilized. The department has compared the edition of the standard currently referenced in this rule with the 2006 edition. The department found no significant differences between the two editions. The department is also proposing to update the citation of the standard.

17.56.303 COMPATIBILITY (1) Owners and operators ~~must~~ shall use an UST system made of or lined with materials that are compatible with the substance stored in the UST system. Owners and operators storing alcohol blends shall use the following codes ~~adopted by reference in (2) below~~ to comply with the requirements of this rule:

(a) American Petroleum Institute Publication ~~1620~~ 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

(2) The department ~~hereby~~ adopts and incorporates by reference the version in effect on July 1, 2006, of the following publications:

(a) American Petroleum Institute Publication ~~1620~~ 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service

Stations," which sets forth requirements for storing and handling regulated substances at UST facilities, and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations," which sets forth requirements for storing and handling regulated substances of UST facilities, and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375.

AUTH: 75-10-405 75-11-505, MCA
IMP: 75-10-405 75-11-505, MCA

REASON: The department is proposing to revise an incorrect publication number for the publication "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations." The correct publication number is 1626.

The department is proposing to provide an effective date for the publications referenced in this rule. This amendment is not substantive, but would make it easier for the regulated community to identify the applicable edition of publications that are utilized.

The authorization and implementation statutes in ARM 17.56.303 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when this rule was adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

17.56.304 REPAIRS (1) Owners and operators of UST systems must shall ensure that repairs will prevent releases due to structural failure or corrosion for as long as the UST system is used to store regulated substances. Owners and operators must shall receive a permit from the department prior to making any repair of an UST system.

(2) Tanks not meeting the design or construction standards of the applicable code of practice adopted by reference in (4) may not be repaired and must be closed in accordance with ARM 17.56.702.

(3) Repairs must meet the following requirements:

(a) Repairs to UST systems must be conducted in accordance with all applicable state, federal, and local laws and regulations and the applicable code of practice adopted by reference in (4). If there is a conflict in the referenced codes, the more stringent and protective code shall apply.

(b) through (h) remain the same.

(4) The department hereby adopts and incorporates by reference the version in effect on July 1, 2006, of the following standards or specifications:

(a) Underwriters Laboratories Standard 1316, 2nd revised ed. April 12, 1996, "Standard for Safety for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products," which sets forth requirements for the manufacture and installation of glass-fiber-reinforced plastic underground storage tanks for petroleum

products, ~~and~~ a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(b) Underwriters Laboratories Standard 1746, ~~2nd revised ed. September 24, 1998,~~ "Corrosion Protection Systems for Underground Storage Tanks," which sets forth ~~design standards for cathodically protected steel~~ requirements for corrosion protection systems for underground storage tanks, ~~and~~ a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(c) American Society of Testing and Materials Standard D4021~~-92, (1992 edition)~~, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks," which sets forth design standards for FRP UST tanks, ~~and~~ a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017;

(d) Steel Tank Institute "Specification~~s and Manual for External Corrosion Protection of Underground Steel Storage Tanks #STI-P3, STI-P3-99~~ for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks," ~~(1999 edition)~~ which sets forth design and installation standards of cathodically protected steel underground storage tanks, ~~and~~ a copy of which may be obtained from Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265; and

(e) Steel Tank Institute ACT-100, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks ~~F894-99~~," ~~(1999 edition)~~ which sets forth a minimum consensus standard for the fabrication, installation, and repair of FRP clad/composite tanks, ~~and~~ a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to provide an effective date of the standards and specifications referenced in this rule. This amendment is not substantive, but would make it easier for the regulated community to identify the applicable edition of publications that are utilized. The department has compared the edition of the publications currently referenced in this rule with the 2006 edition. The department found no significant differences between the two editions. The department is also proposing to update the citations of the standards and specifications.

17.56.308 OPERATING PERMIT REQUIRED (1) After March 31, 2003, except as provided in ~~(9)~~ (10), a person may not place a regulated substance in, dispense a regulated substance from, or otherwise operate an underground storage tank system unless the owner or operator has a valid operating permit and an operating tag for the system.

(2) When the ownership of an UST changes, the operating permit in the name of the previous owner will remain valid for the new owner for 45 days after the transfer is completed.

~~(2)~~ (3) The department shall issue an operating permit when:

(a) the owner or operator has filed with the department an inspection report signed by a licensed compliance inspector and the department determines, on the basis of the inspection report and other relevant information, that the operation and maintenance of the underground storage tank systems at that facility are not in significant noncompliance with Title 75, chapter 11, part 5, MCA, or rules adopted thereunder, on the date of the inspection. The department may issue and renew permits for tanks that are in significant noncompliance with applicable requirements. The department may take enforcement actions, including actions for penalties, and may pursue any other remedy available to the department to address noncompliance with statutes, rules, permits, or orders issued pursuant to this chapter~~.~~; and

(b) the department has received all required UST-related permit, inspection, and registration fees.

(3) through (9) remain the same, but are renumbered (4) through (10).

AUTH: 75-11-505, MCA
IMP: 75-11-509, MCA

REASON: The department is proposing to add language to (1) that would give the new owner time to notify the department of a change in UST ownership, and to provide time for the department to issue a new operating permit reflecting the change.

The department is proposing the addition of language to (3) because the department believes it is not appropriate to issue an operating permit before all relevant fees are paid.

17.56.309 REQUIREMENTS FOR COMPLIANCE INSPECTIONS

(1) The owner or operator of an underground storage tank system shall have all active underground storage tank systems at an individual facility inspected by a licensed compliance inspector, certified under this chapter, at least every three years for compliance with the operation and maintenance requirements of Title 75, chapter 11, part 5, MCA, and the rules adopted thereunder. Inspections must be completed at least 90 days before the expiration date of the operating permit issued pursuant to ARM 17.56.308.

(a) through (b) remain the same.

(2) For an underground storage tank system that is installed before November 1, 2001, an initial inspection must occur no later than January 1, 2002. ~~Subsequent inspections must be completed at least 90 days before the expiration date of the operating permit issued pursuant to ARM 17.56.308.~~

(3) For an underground storage tank system that is installed or returned to active status pursuant to ARM 17.56.701 after November 1, 2001, an initial inspection must be completed at least 90 days, but no more than 120 days, after the date the conditional operating permit is issued or reissued pursuant to ARM 17.56.310. If the facility has other underground storage tank systems installed prior to November 1, 2001, all subsequent inspections of an underground storage tank system installed on or after November 1, 2001, must be conducted on the same

schedule as the underground storage tank systems in existence prior to that date.

(4) through (8) remain the same.

AUTH: 75-11-505, 75-11-509, MCA
IMP: 75-11-509, MCA

REASON: The requirement to complete inspections at least 90 days prior to permit expiration has been moved to (1) to clarify that the requirement applies to all tanks, not just those installed before November 1, 2001. The department is proposing to revise the compliance inspection schedule criteria in (3) to include the reissuing of conditional operating permits to conform the rule to revisions the department is proposing in ARM 17.56.310.

17.56.310 CONDITIONAL, ONE-TIME FILL AND EMERGENCY OPERATING PERMITS (1) remains the same.

(2) The department may issue or reissue a conditional operating permit when an ~~UST system does not have an operating permit and active operation is to be resumed after the UST system has been out of use. A conditional operating permit may be issued upon the department's receipt of the test results or written notice required in ARM 17.56.701~~ underground storage tank system is returned to active status, pursuant to ARM 17.56.701, or when the department has determined that violations resulting from a compliance or oversight inspection have not been resolved.

(3) through (6)(d) remain the same.

AUTH: 75-11-505, 75-11-509, MCA
IMP: 75-11-509, MCA

REASON: The department is proposing to clarify that the department may issue or reissue a conditional operating permit when violations identified in a compliance inspection have not been resolved. The department has encountered instances when, after a conditional operating permit has expired, the ensuing compliance inspection has documented violations that indicate the facility was not properly operated or maintained. By reissuing the conditional operating permit, the department would provide an opportunity for the facility to establish appropriate operation and maintenance.

17.56.403 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS (1) Owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements:

~~(1)~~ (a) Release detection at existing UST systems must meet the requirements for petroleum UST systems in ARM 17.56.402. By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in ~~(2) of this rule~~ (1)(b).

~~(2)~~ (b) Release detection at new hazardous substance UST systems must meet the following requirements as provided in 40 CFR ~~265.193~~ 264.193, adopted by reference in this rule:

(a) remains the same, but is renumbered (i).
(i) through (iii) remain the same, but are renumbered (A) through (C).
(b) remains the same, but is renumbered (ii).
(i) and (ii) remain the same, but are renumbered (A) and (B).
(c) remains the same, but is renumbered (iii).
(i) through (iii) remain the same, but are renumbered (A) through (C).

~~(d)~~ (iv) underground piping must be equipped with secondary containment that satisfies the requirements of ~~(a) above~~ (1)(b)(i) (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with ARM 17.56.408(1). The department ~~hereby~~ adopts and incorporates by reference 40 CFR ~~265.193~~ 264.193, ~~Containment and Detection of Releases~~ which sets forth standards for secondary containment and detection of releases of UST systems, ~~and~~ a copy of which may be obtained from Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: In (2), renumbered (1)(b), the department is proposing to replace 40 CFR 265.193 with 40 CFR 264.193. Part 265 contains interim status standards for owners and operators of hazardous waste facilities. Section 3005(e) of RCRA defines "interim status" as a condition when an owner or operator of a hazardous waste facility that was required to have a permit on October 21, 1976, and which had applied for a permit, would be treated as having been issued such a permit until final administrative disposition of the owner's and operator's permit application was made. Because 30 years has passed since the necessity for interim status, 40 CFR 265.193 has no current relevance. 40 CFR 264.193, which applies to owners and operators of all facilities that treat, store, or dispose of hazardous waste, is the appropriate reference to the release detection standards for hazardous substance UST systems. The proposed amendment would not alter the standards, but simply correct the reference to the CFR.

The authorization and implementation statutes in ARM 17.56.403 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when this rule was adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

17.56.407 METHODS OF RELEASE DETECTION FOR TANKS

(1) through (1)(h) remain the same.

(2) An owner or operator of an UST who conducts continuous interstitial monitoring pursuant to this chapter shall document the communication of all sensors with the console at least monthly, and maintain the records on site for the previous 12 months.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing the addition of ARM 17.56.407(2) to clarify the existing rule and to conform the rule to the requirements proposed in New Rule I. In New Rule I, the department is proposing to implement the secondary containment option pursuant to the Energy Policy Act of 2005, Pub. L. 109-58 (Act). The proposed requirement to document the communication of sensors with the console and maintain records would provide an effective tool for the department to determine compliance with the leak detection monitoring requirements.

17.56.408 METHODS OF RELEASE DETECTION FOR PIPING (1) Each method of release detection for piping used to meet the requirements of ARM 17.56.402 must be conducted in accordance with the following:

(a) Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at ~~10~~ ten pounds per square inch line pressure within one hour~~.~~;

(b) An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements. If an automatic line leak detector fails the annual test at 3.0 gallons per hour, it must be replaced or retested at 5.0 gallons per hour. An automatic line leak detector must be replaced if it fails the 5.0 gallons-per-hour test;

~~(b)~~ (c) A periodic test of piping may be conducted only if it can detect a 0.1 gallon-per-hour leak rate at 1 1/2 times the operating pressure~~.~~; and

~~(c)~~ (d) Any of the methods in ARM 17.56.407(1)(e) through ~~(h)~~ (2) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The department is proposing to add performance standards for the annual testing of automatic line leak detectors. Performance standards are necessary for automatic line leak detectors to ensure that they are working properly. Pursuant to New Rule I(2)(d), any pressurized product piping regulated under this chapter that is installed or replaced must employ an automatic line leak detector.

17.56.701 INACTIVE AND OUT-OF-SERVICE UST SYSTEMS (1) ~~When the status of an active~~ An UST system is ~~changed to~~ inactive~~,~~ when owners and operators ~~shall~~ notify the department, in writing, ~~within ten days after the date the UST ceases to be used~~ that the UST is no longer in use for dispensing, depositing, or storing regulated substances~~,~~. The owner or operator shall continue operation and maintenance of corrosion protection on an out-of-service UST in accordance with ARM 17.56.302, and shall continue operation and maintenance of any release detection in accordance with subchapter 4. Subchapters 5 and 6 must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3% by weight of the total capacity of

the UST system, remains in the system.

(2) through (4)(e)(ii) remain the same.

AUTH: 75-11-505, 75-11-509, MCA
IMP: 75-11-505, 75-11-509, MCA

REASON: The department is proposing to amend (1) to conform the rule to the definition of "inactive tank" in ARM 17.56.101(31). The proposed amendments would regulate out-of-service USTs as the department intended before the term "inactive" replaced the term "temporarily closed" in an earlier rulemaking.

17.56.702 PERMANENT CLOSURE AND CHANGES IN SERVICE

(1) At least 30 days before beginning either permanent closure or a change in service under (2) and (3), owners and operators ~~must~~ shall notify the department and the implementing agency, in writing, of their intent to permanently close or make the change in service, unless such action is in response to corrective action already ~~notified~~ noticed to the department under subchapter 6. The required assessment of the excavation zone under ARM 17.56.703 must be performed after notifying the department and the implementing agency but before completion of the permanent closure or a change in service.

(2) To permanently close a tank or connected piping or both, owners and operators ~~must~~ shall empty and clean it by removing all liquids and accumulated sludges. All tanks, connected piping, or both, taken out of service permanently must also be either removed from the ground or, when approved by the department, filled with an inert solid material.

(3) Continued use of an UST system to store a nonregulated substance is considered a change in service. Before a change in service, owners and operators ~~must~~ shall empty and clean the UST system by removing all liquid, accumulated sludge, and all combustible and flammable vapors and conduct a site assessment in accordance with ARM 17.56.703.

(4) The ~~following~~ cleaning and closure procedures ~~adopted by reference~~ in (5) must be used to comply with this rule~~:~~.

~~(a) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";~~

~~(b) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";~~

~~(c) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and~~

~~(d) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard * * * Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.~~

(5) The department ~~hereby~~ adopts and incorporates by reference the version in effect on July 1, 2006, of the following standards, specifications, and publications:

(a) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks," which sets forth

closure practices for UST systems, ~~and~~ a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(b) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks," which sets forth cleaning standards for UST tanks, ~~and~~ a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(c) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," ~~may be used as guidance for compliance with this section~~ which sets forth entrance standards for UST tanks, ~~and~~ a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

(d) The National Institute for Occupational Safety and Health publication No. 80-106, "Criteria for a Recommended Standard ~~* * *~~: Working in Confined Space," which sets forth standards for working inside an UST tank, ~~and~~ a copy of which may be obtained from Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The department is proposing to provide an effective date for the publications referenced in this rule. This amendment is not substantive, but would make it easier for the regulated community to identify the applicable edition of publications that are utilized. The department is also proposing to revise an incorrectly cited publication.

The authorization and implementation statutes in ARM 17.56.702 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when this rule was adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

17.56.703 ASSESSING THE SITE AT CLOSURE AND CHANGE IN SERVICE (1) through (2) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.704 APPLICABILITY TO PREVIOUSLY CLOSED UST SYSTEMS (1) remains the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.705 CLOSURE RECORDS (1) through (2) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.801 APPLICABILITY (1) through (5) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.802 COMPLIANCE DATES (1) Owners of petroleum underground storage tanks are required to comply with the requirements of this subchapter by the following dates:

(1) through (4) remain the same, but are renumbered (a) through (d).

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.803 DEFINITION OF TERMS For the purposes of this subchapter, the following terms have the meanings given in this rule:

(1) through (16) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.805 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY (1) through (8) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.806 ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS (1) and (2) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.807 FINANCIAL TEST OF SELF-INSURANCE (1) through (7) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.808 GUARANTEE (1) through (4) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.809 INSURANCE AND RISK RETENTION GROUP COVERAGE (1) through (3) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.810 SURETY BOND (1) through (4) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.811 LETTER OF CREDIT (1) through (4) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.816 TRUST FUND (1) through (6) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.817 STANDBY TRUST FUND (1) through (5) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.820 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS BY OWNER OR OPERATOR (1) and (2) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.821 CANCELLATION OR NONRENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE (1) and (2) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.822 REPORTING BY OWNER OR OPERATOR (1) through (3) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.823 RECORDKEEPING (1) through (2)(f) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

17.56.824 DRAWING ON FINANCIAL ASSURANCE MECHANISMS
(1) through (3) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

75-11-505 RELEASE FROM THE REQUIREMENTS (1) remains the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

75-11-505 BANKRUPTCY OR OTHER INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE (1) through (4) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

75-11-505 REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS (1) through (2) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

75-11-505 INTERIM NOTIFICATION REQUIREMENTS (1) through (10) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

75-11-505 GRANTS TO LOCAL GOVERNMENT UNITS (1) through (6) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

75-11-505 DESIGNATION OF LOCAL UST PROGRAMS (1) through (7) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

75-11-505 IMPLEMENTING AGENCY PROGRAM SERVICES AND REIMBURSEMENT (1) through (4) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

75-11-505 REVOCATION AND SURRENDER OF DESIGNATION

(1) through (4) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The authorization and implementation statutes in ARM 17.56.702 through 17.56.705, 17.56.801 through 17.56.803, 17.56.805 through 17.56.811, 17.56.816, 17.56.817, 17.56.820 through 17.56.825, 17.56.827, 17.56.828, 17.56.901, and 17.56.1002 through 17.56.1005 are incorrect. Although 75-10-405, MCA, provided rulemaking authority when these rules were adopted, the statutes were later amended and the rulemaking authority for the underground storage tank program is now provided in 75-11-505, MCA.

17.56.1422 PROHIBITION OF UNPROFESSIONAL LICENSEE CONDUCT (1) Any of the following acts of a person licensed under this subchapter constitute unprofessional conduct, are prohibited, and may result in the department conditioning, restricting, suspending, or revoking a license issued under this subchapter:

(a) through (k) remain the same.

(l) failure to adequately inspect an underground storage tank system for compliance with its operation, maintenance, and recordkeeping requirements in accordance with ARM 17.56.309;

(m) and (n) remain the same.

AUTH: 75-11-204, MCA
IMP: 75-11-204, 75-11-211, MCA

REASON: The department is proposing to revise the list of acts that may constitute unprofessional conduct. The phrase "adequately inspect" is clarified to include inspection requirements in ARM 17.56.609. The addition of this phrase would clarify the department's authority to restrict, suspend, or revoke a license for unprofessional conduct related to inspecting the operation, maintenance, and recordkeeping for underground storage tank systems.

4. The proposed new rule provides as follows:

NEW RULE I SECONDARY CONTAINMENT, UNDER-DISPENSER CONTAINMENT, AND INTERSTITIAL MONITORING (1) Any UST that is replaced or installed must employ:

(a) secondary containment and approved continuous interstitial monitoring, as described in ARM 17.56.407(1)(g) and (2), as a monthly leak detection method;

(b) under-dispenser containment that provides access; and

(c) a liquid-tight tank top sump where the product piping exits the tank.

(2) Any pressurized product piping regulated under this chapter that is installed or replaced must:

(a) employ secondary containment;

(b) terminate in a liquid tight sump at each end. The sumps must:

(i) be liquid-tight on their sides, bottom, and at any penetrations;

(ii) be compatible with the substance conveyed by the piping; and

(iii) allow for visual inspection and access to the components in the containment system and/or otherwise allow the system to be monitored;

(c) employ approved continuous interstitial monitoring, as described in ARM 17.56.407(1)(g) and (2), as a monthly leak detection method; and

(d) employ an automatic line leak detector.

(3) If over 50% of the length (measured from the piping terminus at the tank to the nearest point where the product is dispensed or otherwise used) or a pressurized product pipe regulated under this chapter is replaced, then the entire length of product piping must be replaced with secondarily-contained piping. The replacement of a line of product piping from a particular UST does not require the replacement of product pipes connected to other USTs.

(4) Under-dispenser containment must be installed under dispensers when:

(a) a new UST system is installed;

(b) dispensers and any associated hardware used to attach the dispenser to the product piping are replaced;

(c) product piping is repaired or replaced at an associated dispenser island;

(d) significant modifications are made to the concrete at a dispenser island; or

(e) the department determines under-dispenser containment is necessary to meet the requirements of this rule.

(5) If under-dispenser containment is required pursuant to (1) or (4), the containment must:

(a) employ approved interstitial monitoring, as described in ARM 17.56.407(1)(g) and (2), as a monthly leak detection method;

(b) be liquid-tight on its sides, bottom, and at any penetrations;

(c) be compatible with the substance conveyed by the piping; and

(d) allow for visual inspection and access to the components in the containment system and/or allow the system to be monitored.

AUTH: 75-11-505, MCA
IMP: 75-11-509, MCA

REASON: The department is proposing New Rule I, which implements Section 1530 of the Energy Policy Act of 2005, Pub. L. 109-58, (Act). Section 1530 of the Act requires that each new UST, or piping connected to any such new tank installed after February 8, 2007, either have secondary containment if it is within 1000 feet of any existing community water system or existing potable drinking water well, or the person who manufactures or installs the UST system shall maintain financial responsibility for the costs of corrective action. Because the vast majority of USTs are located within 1000 feet of a community water system, and it is difficult to determine the exact distance to a community water system, this rule would require all USTs, newly replaced or installed, to have secondary containment. Requiring all newly replaced or installed USTs to have secondary containment is environmentally sound and would be simpler for the regulated community to implement.

The department has historically allowed continuous interstitial monitoring for

catastrophic line leak detection which is less stringent than EPA's preferred method for line leak detection. (EPA's preferred method for line leak detection is not codified in any federal regulation.) The department is proposing a requirement in (2)(d) to install an automatic line leak detector on new and replaced pressurized product lines to conform the rule to EPA's preferred method.

5. The rules proposed for repeal are as follows:

17.56.120 NOTICE OF ASSESSMENT OF ADMINISTRATIVE PENALTY (AUTH: 75-11-505, MCA; IMP: 75-11-505, 75-11-525, MCA), located at page 17-6041, Administrative Rules of Montana. This rule would not be replaced.

17.56.121 DETERMINATION OF ADMINISTRATIVE PENALTIES (AUTH: 75-11-505, MCA; IMP: 75-11-505, 75-11-525, MCA), located at page 17-6041, Administrative Rules of Montana. This rule would not be replaced.

REASON: The repeal of ARM 17.56.120 is necessary because the rule substantively repeats the language in 75-11-525(2), MCA, and rules may not unnecessarily repeat statutory language. Also, retaining the rule would be confusing and redundant.

The repeal of ARM 17.56.121 is necessary because House Bill 94 (2007) eliminates the authority for the department to adopt a schedule of minimum and maximum penalties for specific violations. Section 75-1-1001, MCA, and ARM Title 17, chapter 4, subchapter 3, now provide factors for calculating penalties assessed under Title 75, chapter 11, MCA, and the rules adopted thereunder.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail to rmartin@mt.gov, no later than August 3, 2007. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. James Madden, attorney, has been designated to preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA;

underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Representative Kendall Van Dyk, the primary sponsor of HB 94 (2007), was notified by mail on April 19, 2007.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

/s/ Richard H. Opper
RICHARD H. OPPER, Director

Certified to the Secretary of State, June 25, 2007.